APPENDIX — EXCERPTS FROM BRIEF OF PLAINTIFF-APPELLEE IN THE APPELLATE COURT OF ILLINOIS

[commencing at page 13]

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I. Defendant Has Waived Certain Issues On Appeal

In the trial court, Defendant raised various defenses and other issues which are not addressed in its brief. In its original answer to Plaintiff's amended Count V, Defendant filed five separate affirmative defenses. (C326, 333-335). Those affirmative defenses were the following:

(a) That the individual defendants were entitled to immunity under the Local Governmental and Governmental Employees Tort Immunity Act 745 ILCS 10/1-101 et seq.;

(b) Section 105 ILCS 5/10-22.6 provides that no action would lie against the Defendants for the expulsion of students guilty of gross misconduct;

(c) Plaintiff's claim under 42 U.S.C. Section 1983 failed to state a cause of action;

(d) The Fourteenth Amendment to the United States Constitution does not provide rights and protections for the injuries claimed;

(e) Plaintiff did not have certain due process rights in a student expulsion hearing; (C334-335).

On September 11, 1997 the trial court entered an order granting Plaintiff's motion to Strike as to the second and fourth listed defenses in their entirety, and as to a substantial portion of the fifth listed defense. (C350). Defendant was granted leave to amend defense no. 4. Defendant has not appealed from this order.

[14] At trial, Defendant sought to introduce certain additional affirmative defenses. (C946)

1. Plaintiff has waived any constitutional attack on any School District actions before the underlying expulsion because the same was not raised at the expulsion hearing.

2. Plaintiff has waived any claim concerning the provision of special education or remedial services after his expulsion or after the Court reversed the order of expulsion in September 1996 given that Plaintiff has failed to pursue available remedies for such a claim under the *Individuals With Disabilities Education Act.*

(C949)

The Court denied Defendant's Motion for Leave to File these additional defenses. (C982). Defendant has not appealed from this order either.

It is well settled that issues that are not raised or argued before the appellate court are deemed waived. *Tivoli Enterprises, Inc. v. Zehnder*, 297 Ill. App. 3d 125,

696 N.E. 2d 1202, 1204 (2d Dist. 1998); *Kincaid v. Ames Department Stores, Inc.*, 283, Ill. App. 3d 555, 570, 670 N.E. 2d 1103 (1996). None of the foregoing affirmative defenses, nor the trial court's rulings with regard to them are addressed in Defendant's brief. Accordingly, they should be deemed to have been waived.

Defendant has also failed to provide citations to the record to support several of its arguments. For example, the sole citation to the record in Defendant's argument regarding damages is to one page of the trial court's order. Defendant has, therefore, waived its argument on causation and damages.

Supreme Court Rule 341(e)(7), mandates that an appellant provide citation to the pages of the record he relies upon to support his claim. *See, e.g., Sohaey v. VanCura*, 240 Ill. App. 3d 266, 273-274 (2d Dist. 1993). A reviewing court is entitled to have [15] issues clearly defined with pertinent authority cited and coherent arguments presented; arguments that are inadequately presented on appeal are waived. *McCarthy v. Denkovski*, __ Ill. App. 3d __, 1998 WL 672087, 672087, 703 N.E.2d 408 (1st Dist. 1998); *Homstrom v. Kunis*, 221 Ill. App. 3d 317, 325, 163 Ill. Dec. 723, 581 NH.E. 2d 877 (1991).

II. The Evidence At Trial Established That The Defendant's Policy And Practices Rendered It Liable To The Plaintiff Under 42 USC Sec 1983

The parties in this action agreed as to the basic elements necessary to establish liability under 42 U.S.C. Section 1983.

At page 12 of the Defendant's Memorandum of Law in Support of its Motion for Summary Judgment, it set forth the applicable statutory and decisional law. (C655). During closing arguments, Plaintiff's counsel outlined these elements to the trial court, reading from the Defendant's Memorandum: (R1161-1163)

"A Section 1983 claim is predicated on two elements: 1) the conduct complained of must have been committed by a person acting under color of state law; and 2) this conduct must have deprived the plaintiff of rights, privileges or immunities secured by the Constitution of laws of the United States. *Whitehorn v. Harrelson*, 758 F.2d 1416, 1419 (11th Cir. 1985) (citing (*Paratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 1912 (1981). A governmental entity is liable under 42 U.S.C. Section 1983 only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury for which the government as an entity is responsible. *Baxter v. Vigo County School Corp.*, 26 F.3d 728, 734 (7th Cir. 1994) (citing *Monell v. Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018 (1978)." (Quote taken from Defendant's Memorandum of Law in Support of its Motion for Summary Judgment, at page 12, C655).

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